

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PIC-AIR, INC.

and

Case 10--CA--25315

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION, AFL--CIO,
LOCAL 3--893

October 9, 1991

DECISION AND ORDER

By Chairman Stephens and Members Denney and Raudabaugh
Upon a charge filed by the Union on May 17, 1991, and an amended charge

filed on July 8, 1991, the General Counsel of the National Labor Relations Board issued a complaint on July 9, 1991, against Pic-Air, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent has failed to file an answer.

On August 15, 1991, the General Counsel filed a Motion for Summary Judgment. On August 20, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated July 30, 1991, notified the Respondent that unless an answer was filed by August 2, 1991, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a Tennessee corporation, has an office and place of business located at Oak Ridge, Tennessee, where it is engaged in the business of die casting. During the 12 months preceding the issuance of the complaint, a representative period, the Respondent in the course and conduct of its business operations, sold and shipped from its Oak Ridge, Tennessee facility, finished products valued in excess of \$50,000 directly to customers located outside the State of Tennessee. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Unit

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by Respondent at its Oak Ridge, Tennessee facility, including toolmakers, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

B. The Refusal to Bargain

In a secret ballot election conducted on May 12, 1972, the unit employees designated the Union as their representative for the purposes of collective bargaining with the Respondent with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. On May 22, 1972, the Union was certified as the exclusive collective-bargaining representative of the employees in the unit.

Since about May 7, 1991, and continuing, the Respondent closed its Oak Ridge, Tennessee facility without giving timely notice to the Union and without affording the Union an opportunity to bargain concerning the effects of the closing on unit employees. We find that the Respondent, by this conduct, has been engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By permanently closing the Oak Ridge facility about May 7, 1991, without giving timely notice to the Union and without affording the Union an opportunity to bargain with respect to the effects of the closing on unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Because of the Respondent's unlawful failure to bargain with the Union about the effects of the decision to close the Oak Ridge facility, the bargaining unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union, on request, about the effects of the closure on the unit employees, and shall accompany our order with a limited backpay requirement designed both to make the employees whole for losses suffered as a result of the Respondent's failure to bargain, and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so in this case by requiring that the Respondent pay backpay to unit employees in a manner similar to that required in Transmarine Corp., 170 NLRB 389 (1968). The Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the plant closure on unit employees; (2) a bona

fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within the 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith.

In no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the amount these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ.

ORDER

The National Labor Relations Board orders that the Respondent, Pic-Air, Inc., Oak Ridge, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Closing its facility without giving timely notice to the Oil, Chemical and Atomic Workers International Union, AFL--CIO, Local 3--893, and without affording the Union an opportunity to bargain as the exclusive representative of the unit employees with respect to the effects of the closing on the unit employees. The appropriate unit is:

All production and maintenance employees employed by Respondent at its Oak Ridge, Tennessee facility, including toolmakers, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive representative of the unit employees regarding the effects of the closing of the Oak Ridge facility, and pay the employees limited backpay in the manner set forth in the remedy section of this Decision and Order.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful to ensure compliance with this Order.

(c) Post at its facility in Oak Ridge, Tennessee, copies of the attached notice marked "'Appendix.'"¹ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Mail a copy of the attached notice marked "'Appendix'" to all employees who were employed by the Respondent prior to the closing of the Oak Ridge facility. Copies of the notice, on forms provided by the Regional Director, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. October 9, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT close our Oak Ridge facility without giving timely notice to the Oil, Chemical and Atomic Workers International Union, AFL--CIO, Local 3--893, as the exclusive representative of all employees in the appropriate unit and WE WILL NOT fail and refuse to bargain collectively with the Union about the effects of the closing of the facility on unit employees. The appropriate unit is:

All production and maintenance employees employed by Respondent at its Oak Ridge, Tennessee facility, including toolmakers, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively with the Union with respect to the effects of closing our facility upon the employees in the above-described unit.

WE WILL pay the employees who were employed at the facility on the date of the closing their normal wages for a period of time as required in the Decision and Order of the National Labor Relations Board.

PIC-AIR, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 101 Marietta Street, NW, Suite 2400, Atlanta, Georgia 30323-3301, Telephone 404--841--2886.